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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of August 1, 1975

between

APACHE RAILWAY COMPANY

and

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee under a Trust Agreement
dated as of the date hereof with
the parties named therein

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LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1975, between APACHE RAILWAY COMPANY, an Arizona corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with the parties named therein (said bank, so acting, being hereinafter called the Lessor, and said parties being hereinafter called the Beneficiaries).

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof with ACF Industries, Incorporated, a New Jersey corporation (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS under an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) the Builder is assigning its interest in the Security Documentation to American National Bank & Trust Company of Chicago, a national banking association, as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Finance Agreement dated as of the date hereof with the Lessee and the party named in Schedule A thereto (hereinafter called the Finance Agreement); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS Southwest Forest Industries, Inc., a Nevada corporation (hereinafter called the Guarantor), of which the Lessee is a subsidiary, has agreed to guarantee to the Lessor, as provided in a Guaranty Agreement dated as of August 1, 1975 (hereinafter called the Guaranty Agreement), with the Lessor, the due and punctual payment of the sums payable by, and the due and punctual performance of the obligations of, the Lessee under this Lease and the Lessee's Consent and Agreement dated as of the date hereof (hereinafter called the

Consent), by the terms of which the Lessee consents to the assignment of the Lease dated as of the date hereof (hereinafter called the Lease Assignment);

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and

acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The Lessee shall not accept delivery of any Unit before the Closing Date (as defined in the Security Documentation) with respect to such Unit.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments payable on January 1 and July 1 in each year, commencing January 1, 1976. The rental payment payable on January 1, 1976, shall be in an amount equal to the sum of (a) 31.49% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease times .02986112% for each day elapsed from the Closing Date with respect to such Unit to the date of such payment; provided, however, that the amount of this portion of such rental payment shall in no event be less than the amount that would have been payable if 90 days had elapsed between the Closing Date with respect to each Unit and January 1, 1976; plus (b) an amount equal to the interest payment due and payable on January 1, 1976, pursuant to paragraph 4 of Article 4 of the Security Documentation. The next 30 rental payments shall each be in an amount equal to 5.055% of the Purchase Price of each Unit then subject to this Lease. As additional rental hereunder, the Lessee agrees to pay, on January 1, 1976, and/or on the Cut-Off Date, as applicable, as provided in the Finance Agreement, such amounts as equal the amounts required to enable the Vendor to comply with

the third paragraph of Paragraph 1 and the last paragraph of Paragraph 4 of the Finance Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation and, second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available Chicago or Federal funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. The Security Documentation shall not be modified or amended in a manner that might adversely affect the Lessee without the Lessee's consent. If an event of default should occur under the

Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that if the Lessee has not defaulted in the performance of its obligations under this Lease and the Vendor takes possession of the Units pursuant to the Security Documentation, the Lessee shall have no further obligation for payment of rentals or other amounts or liabilities under this Lease except for amounts incurred or arising as a result of or growing out of acts, events, occurrences, or possession of the Units prior to the termination of the Lessee's possession thereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words that may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph (I)F of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person,

association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiaries for collection or other charges and will be free of expense to the Lessor and the Beneficiaries with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiaries in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Beneficiaries have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein; provided, however, that the Lessee shall not be responsible for the payment of any impositions levied or imposed in connection with any assignment of this Lease other than the Lease Assignment. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiaries or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Beneficiaries, adversely affect the title, property or rights of the Lessor and the Beneficiaries hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within

30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documentation, or the Beneficiaries shall become obligated to make payment to the Lessor pursuant to any similar provision with respect to taxes in the Trust Agreement, not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiaries to fulfill completely their obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will make such reports in such manner as to show the interest of the Lessor, the Beneficiaries and the Vendor in such Units.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Beneficiaries, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiaries of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiaries reasonably may require to permit the compliance by the Beneficiaries with the requirements of taxing jurisdictions.

§ 7. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>
January 1, 1976	105.0665
July 1, 1976	105.8299
January 1, 1977	106.1965
July 1, 1977	106.2946
January 1, 1978	106.1326
July 1, 1978	105.6871
January 1, 1979	104.9950
July 1, 1979	97.3852
January 1, 1980	96.2020
July 1, 1980	94.7848
January 1, 1981	93.1461

<u>Date</u>	<u>Percentage</u>
July 1, 1981	84.6393
January 1, 1982	82.6665
July 1, 1982	80.5600
January 1, 1983	78.3243
July 1, 1983	69.2915
January 1, 1984	66.7995
July 1, 1984	64.1804
January 1, 1985	61.4383
July 1, 1985	58.5720
January 1, 1986	55.5855
July 1, 1986	52.4773
January 1, 1987	49.2347
July 1, 1987	45.8619
January 1, 1988	42.3799
July 1, 1988	38.8072
January 1, 1989	35.1441
July 1, 1989	31.3916
January 1, 1990	27.5527
July 1, 1990	23.6283
January 1, 1991	20.0000

Whenever any Unit shall suffer a Casualty Occurrence (i) during any extended term of this Lease, or (ii) after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks

insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any such insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such insurance proceeds or condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor, the Beneficiaries or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor and the Beneficiaries shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Beneficiaries may request during the continuance of this Lease.

The Lessee will furnish to the Lessor and, in duplicate, to the Vendor and will cause the Guarantor to furnish to the Lessor and, in duplicate, to the Vendor (i) within 90 days after the end of each of the first three quarterly fiscal periods of the Lessee consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each as of the close of such periods, together with the related statements of income and surplus, all in reasonable detail and certified by the Treasurer of the Lessee and the Guarantor and (ii) within 120 days after

the close of each of the fiscal years of the Lessee and the Guarantor, consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each as of the close of such fiscal years, together with the related consolidated statements of income and surplus and source and application of funds for such fiscal years, all in reasonable detail and, in the case of the Lessee, certified by the Lessee's Treasurer, and, in the case of the Guarantor, certified by a recognized national firm of independent public accountants, such certification including their certificates and accompanying comments, and (iii) within 120 days after the close of the fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default hereunder or an event of default under the Security Documentation or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the filing of the same each year, the annual report of the Guarantor under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. AS BETWEEN THE LESSOR AND THE LESSEE, THE LESSEE LEASES THE EQUIPMENT AS-IS AND THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR, EXCEPT AS SET FORTH IN § 12 HEREOF, AS TO THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT

TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing hereunder, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own

expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiaries and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities to the extent not covered by the Builder's indemnity contained in Item 4 of Annex A to the Security Documentation, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an event of default under the Security Documentation (it being understood and agreed, however, that this shall not be construed to create or result in any liability to the Lessee for the Conditional Sale Indebtedness [as defined in the Security Documentation] or interest thereon) or this Lease, the ownership of any Unit, the ordering, acquisition, sale to the Lessor, lease, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, or any negligent or wrongful act or omission of the Lessee for itself or as agent or attorney in fact for the Lessor, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

At the request of the Lessor or the Beneficiaries, the Lessee will prepare and deliver to the Lessor and the Beneficiaries within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for four days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein or in the Guaranty Agreement by the Lessee or the Guarantor respectively, and such default shall continue for 25 days after written notice from the Lessor or the Vendor to the Lessee and/or the Guarantor specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after

such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, or of the Guarantor under the Guaranty Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or of the Guarantor under the Guaranty Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, or of the Guarantor under the Guaranty Agreement, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon

the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Beneficiaries in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiaries, be equal to all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiaries as a direct or indirect result

of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease or any inaccuracy of the assumptions contained in § 17 hereof resulting by reason of an Event of Default under this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the net return of each of the Beneficiaries under this Lease to be equal to the net return that would have been available to such Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, any inaccuracy of the assumptions contained in § 17 hereof resulting by reason of an Event of Default under this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Beneficiaries for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (i), (ii) and (iii) of this subparagraph (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing

remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the exercise of the Lessor's remedies hereunder, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines

of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns including (i) the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively, and (ii) the Vendor; and the fact that the Vendor is specifically named in certain provisions of this Lease as entitled to certain benefits or rights hereunder shall not be construed as limiting the rights of the Vendor to such provisions in the event of the assignment of this Lease to the Vendor, but the Vendor shall be entitled, in addition thereto, to all rights of the Lessor so assigned to the Vendor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor,

the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, except that the Lessee shall have the right at any time to assign this Lease or to sublease all or any part of the Units to the Guarantor; provided, however, that no such assignment or sublease shall relieve the Lessee of any of its obligations hereunder or relieve the Guarantor of any of its obligations under the Guaranty Agreement; and provided, further, that, in the event of any such assignment or sublease, the Guarantor shall expressly accept and assume all of the terms, covenants and conditions contained in this Lease to be kept or performed by the Lessee and will agree to comply therewith and be bound thereby. Any purported assignment or sublease in violation of this § 12 shall be void and of no force and effect. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate of the Lessee upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Unit outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor

that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one additional five-year period commencing on the scheduled expiration of the original term of this Lease at a rental equal to the lesser of (a) a "Fair Market Rental" payable in semiannual payments on January 1 and July 1 in each year of such extended term, and (b) a rental payable in semiannual payments on January 1 and July 1 in each year of such extended term, each such payment being in an amount equal to 2.5275% of the Purchase Price of each Unit then subject to this Lease.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may

select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and, within such 30-day period, the Lessee shall not have agreed in writing to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall expire 90 days after the termination of this Lease or any renewal thereof.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.
As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such

Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .02986112% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Opinion of Counsel. The Lessee represents and warrants that:

On each Closing Date the Lessee will deliver to the Lessor

(I) two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, the Vendor and the Beneficiaries, to the effect that:

A. the Lessee is a corporation duly organized and validly existing in good standing under the

laws of the State of Arizona and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease and the Consent;

B. the Lessee has the full corporate power, authority and legal right to enter into and perform its obligations under this Lease and the Consent and the execution, delivery and performance of this Lease and the Consent have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law binding on the Lessee or contravene the certificate of incorporation or by-laws of the Lessee or any material indenture, mortgage, contract or other agreement of which such counsel has knowledge, to which the Lessee is a party or by which the Lessee is bound as guarantor or otherwise, or any law, governmental rule, regulation or order;

C. neither the execution and delivery by the Lessee of this Lease and the Consent, nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other Federal, state, foreign or other governmental authority or agency, except the filing and recording of such document with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act;

D. to the knowledge of such counsel, there are no pending or threatened actions or proceedings before any court, arbitrator, administrative agency or governmental body which will materially adversely affect the condition, business or operations of the Lessee or the ability of the Lessee to perform its obligations under this Lease and the Consent;

E. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute legal, valid, binding and enforceable agreements of the Lessee;

F. the Security Documentation, the Assignment, this Lease, the Lease Assignment and the Consent have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America; and

G. to the knowledge of such counsel, no mortgage, deed of trust, or other lien of any nature whatsoever, presently in effect, which now covers or affects or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units; and

(II) two counterparts of the written opinion of counsel for the Guarantor, addressed to the Lessor, the Vendor and the Beneficiaries, to the effect that:

(A) the Guarantor is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Nevada, with full corporate power and authority to enter into and perform its obligations under the Guaranty Agreement;

(B) the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor, does not require any stockholder approval, does not contravene the certificate of incorporation or by-laws of the Guarantor and constitutes a legal, valid and enforceable agreement binding upon the Guarantor;

(C) no approval is required of any governmental agency or public regulatory body with respect to the entering into or performance of the Guaranty Agreement by the Guarantor or, if any such approval is required, it has been duly obtained; and

(D) the entering into and the performance of the Guaranty Agreement by the Guarantor does not require the approval or consent of any trustee named in, or the holders of any indebtedness or obligations of the Guarantor outstanding under or secured by, any material indenture, mortgage, deed of trust, or other similar agreement or instrument to which the Guarantor is a party or by which it may be bound and of which such counsel has knowledge (or, if any such approval or consent is required, it has been duly obtained) and the entering into and the performance of the Guaranty Agreement by the Guarantor will not result in any breach of or constitute a default under any such indenture, mortgage, deed of trust or other agreement or instrument of which such counsel has knowledge.

In giving the opinions specified in subparagraphs I(E) and II(B) of this § 15, counsel may qualify any opinion to the effect that any agreement is a legal, valid, binding and enforceable instrument by (i) a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) stating that no opinion is expressed that any particular provision of such agreement is specifically enforceable other than an obligation to pay money.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Security Documentation and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments (except an instrument in connection with an assignment of this Lease or the Security Documentation other than the assignments under the Lease Assignment and the Assignment) required by law or

reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the Lease Assignment or the Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Federal Income Taxes. As between the Beneficiaries and the Lessee, the Beneficiaries, as the owners of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (a) the depreciation deduction with respect to the Units authorized under section 167 of the Code, (b) deductions pursuant to section 163 of the Code with respect to interest payable under the Security Documentation (such deductions being herein called the Interest Deduction) and (c) the investment credit pursuant to section 38 and related sections of the Code (herein called the Investment Credit) with respect to the Purchase Price of the Units.

For purposes of this § 17, the terms "Beneficiaries" and "Beneficiary" shall include any affiliated group, within the meaning of section 1504 of the Code, of which any Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiaries over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiaries such records as will enable the Beneficiaries

to determine the extent to which they are entitled to the benefit of the Investment Credit and the ADR Deduction (hereinafter defined) with respect to the Units.

The rental payable hereunder has been calculated on the assumptions that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Beneficiaries become the owners of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Beneficiaries become the owners of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiaries; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal tax purposes all amounts includible in the gross income of the Beneficiaries with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (v) the Beneficiaries will be entitled to the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double-declining method of depreciation, and switching to the sum-of-the-years-digits method when most beneficial to the Beneficiaries (such deduction being herein called the ADR Deduction); (vi) the Beneficiaries will be entitled to a 10% Investment Credit in 1975 with respect to the Purchase Price of the Units; (vii) the Equipment will have a value at the termination of this Lease and any extension thereof of at least 20% of the Purchase Price thereof and a useful life at the termination of this Lease and any extension thereof of at least five and one-half years; and (viii) the Trust Agreement creates an organization which will be deemed by the Internal Revenue Service to be a partnership for federal income tax purposes. The Lessee will maintain sufficient records to verify the use of the Units during the term of the Lease, which records will be furnished to the Beneficiaries within 30 days after receipt of a written demand therefor.

If (a) by reason of the inaccuracy in law or fact of any of the assumptions set forth above or the retroactive repeal, modification, amendment or other change of or to any law or any regulation issued thereunder (except as a direct or indirect result of the occurrence of any Excluded Event set forth below) prior to the Lessor's obtaining a favorable ruling (herein called the Ruling) from the Internal Revenue Service as to the Beneficiaries' being the owner of the Units and as to their right to claim the Investment Credit, the ADR Deduction and the Interest Deduction, the Beneficiaries shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit or (b) subsequent to the receipt of the Ruling, the Beneficiaries shall incur a Loss with respect to any Unit due to (x) the inaccuracy of any statement in any letter or document furnished to the Lessor or the Beneficiaries by the Lessee (or any officer, agent or employee thereof or of any affiliated company thereof) in connection with the application for the Ruling, (y) the noncompliance by the Lessee with any provision of the third paragraph of this § 17 or (z) the use of any Unit by the Lessee in a manner inconsistent with the Beneficiaries' claim to the Investment Credit and the ADR Deduction, then in any such case the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit cannot be claimed by the Beneficiaries, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit as, in the reasonable opinion of the Beneficiaries, will cause the net return of each of the Beneficiaries in respect of such Unit under this Lease to equal the net return (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease that would have been available if such Beneficiary had been entitled to utilization of all of the Benefits, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Beneficiaries attributable to the disallowance, recapture or loss of all or any portion of the Benefit; provided, however, that such rental rate shall not be so increased and such additional rental will not be paid

to the extent that such Beneficiary shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct or indirect result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or such Beneficiary of any interest in such Unit or the voluntary reduction by the Lessor or such Beneficiary of its interest in the rentals from such Unit under this Lease unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of such Beneficiary to properly claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of such Beneficiary to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

In the event the rental rates shall be increased as hereinbefore provided, the Casualty Values set forth in § 7 hereof and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be increased accordingly.

The Lessor may, but is not required to, apply for and seek the Ruling. The Lessee will furnish such documents, records and representations as shall be deemed necessary and appropriate for any such request by the Lessor.

For purposes of this § 17 and clause (iii) of subparagraph (b) of § 10 hereof, if an amount is to be determined "in the reasonable opinion of the Beneficiaries" and the Lessee disagrees with the Beneficiaries' determination of such amount, then the determination of such amount shall be made by a third party acceptable to both the Lessee and the Beneficiaries; provided, however, that until such third party shall have

made a determination, the Beneficiaries' determination shall govern.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11-3/4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, at 130 South LaSalle Street, Chicago, Illinois 60690, Attention of Corporate Trust Department, and

(b) if to the Lessee, at P. O. Drawer E, Snowflake, Arizona 85937, Attention of the President,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered

to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Arizona; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 23. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiaries or on account of any representation, undertaking or agreement of the Lessor or the Beneficiaries, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 24. Agreements for Benefit of Beneficiaries. All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 10 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and any of the assigns of the Beneficiaries under the Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first

above written.

APACHE RAILWAY COMPANY,

by

W. Chapin
Vice President

[Corporate Seal]

Attest:

A. C. Elden
Asst. Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee,

by

Michael J. Quinn
Vice President

[Corporate Seal]

Attest:

Robert A. Quinn
Assistant Trust Officer

STATE OF ARIZONA,)

) SS.:

COUNTY OF MARICOPA,)

On this 10th day of September, 1975, before me
personally appeared P. C. GAFFNEY, to me per-

sonally known, who, being by me duly sworn, says that he is a Vice President of APACHE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

November 14, 1977

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 11 day of Sept 1975, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who, being by me duly sworn, says that he is a Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Kathleen A. Colan
Notary Public

[Notarial Seal]

My Commission expires 5/5/79

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton gondola car; AAR Mechanical Designation HT	70	SWFX 1600-1669